tion is the same as giving no information at all. An offence is therefore committed under the section.

Utam Singh on the other hand said that when he saw the Chief Clerk he said that he did not know who had been driving his car on the dates mentioned but that he himself might have been.

Accepting this without qualification can he be said to have satisfied the requirements of the section? In my opinion clearly not. To say simply that he did not know is no defence because he must also show that he had used reasonable diligence to ascertain the information. To say as he did was to give no information at all.

For these reasons I convicted Utam Singh and fined him $5 on each charge.

The order on this appeal will then be that the appeal is allowed and the convictions and sentences are set aside. The fines paid must be refunded. There will, however, be a conviction recorded against him under two charges under section 33 (i) (b) of the Road Traffic Enactment to which he is fined $5 on each charge.

Appeal allowed.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
October, 10, 1938

KUNDAN SINGH & 7 ORS.....Appellants
vs.
PUBLIC PROSECUTOR.....Respondent

[PERAK MAGISTRATE'S CRIMINAL APPEALS Nos. 53-60 of 1938]

Criminal law—charge of rioting—conviction for causing hurt—whether conviction sustainable —Penal Code (Cap. 45), ss. 147, 323; Criminal Procedure Code (Cap. 6), S. 169.

The appellants were charged with rioting under Section 147 of the Penal Code but were convicted for causing hurt under Section 323 of the Penal Code.

Held, that the conviction must be set aside, and that although causing hurt might be an element in a case of riot, it is not a "minor offence" within section 169 of the Criminal Procedure Code.

The term "minor offence" in Section 169 means merely an offence with a smaller punishment attached than the offence with which an accused person was originally charged.

Sub-section (i) of Section 169 covers the case where some of the facts only of those constituting the original offence are proved and subsection (ii) of that section where additional facts are proved pointing to the commission of the minor offence.

MAGISTRATE'S CRIMINAL APPEAL.

Diamond for the Appellants.

Brodie, Deputy Public Prosecutor for the Respondent.

Cur. Ad. Vult.

MURRAY-AYNSLEY, J.—In this case the Appellants were charged as follows:—

> "That you on 10.4.38 at about 7.30 p.m. at the Sikh Settlement 3rd mile, Gopeng Road, Ipoh were a member of an unlawful assembly, and, in prosecution of the common object of such assembly—viz, the committing of criminal intimidation, committed the offence of rioting which is an offence punishable under Section 147 Cap. 45."

The Magistrate convicted them under Section 323 of Cap. 45 for causing hurt. This could only be done by his powers under Section 169 of the Criminal Procedure Code. At first sight some difficulty appears to arise from the use of the words "minor offence," the use of the word "minor" would according to its natural meaning indicate a division into categories not a mere relation between two offences *inter se* but subsection (iii) shows that other offences under the Penal Code may be minor offences within the meaning of this section, and therefore the term means merely an offence with a smaller punishment attached than the offence with which an accused person was originally charged. In interpreting the section consideration must be given to the effect of sub-section (i) and (ii). Subsection (i) covers the case where some of the facts only of those constituting the original offence are proved, sub-section (ii) where additional facts are proved. The present case is one which comes within sub-section (i) if it comes within Section 169 at all. To come within sub-section (i) the offence of which the accused is convicted must be one, which is, as it were, necessarily included in the offence originally charged, which is not the case here, although causing hurt might have been element in a case of riot. In this connection it is useful to refer to the original charge.

I have in deciding the case followed the not very authoritative Indian decisions on the corresponding Indian Section. The convictions must therefore be quashed.

I may add that I fail to see how if the Magistrate, as is apparently the case, found that there was not sufficient common purpose for the purpose of establishing a case of riot he could convict all the appellants of the offence of causing hurt.

[APPELLATE CIVIL JURISDICTION]
MURRAY-AYNSLEY, J.

SANTA SINGH son of MEYA SINGH.....Appellant
vs.
SANTA SINGH son of LEHNA SINGH.....Respondent

[PERAK MAGISTRATE'S CIVIL APPEAL No. 26 of 1938]

Bills of Sale—assurance of cattle—whether include offspring born during subsistence of bill —description of chattels—sufficiency of—Bills of Sale Enactment (Cap. 57) s. 5 (i).

By a bill of sale the grantor assigned among other buffaloes "one Indian she buffalo calf colour black one